

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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CHARLES DEMPSEY, individually, and  
L.D., by her Father and Natural  
Guardian, Charles Dempsey,

Plaintiffs,

-against-

THE CITY OF ROCHESTER, a Municipal  
entity, et al.,

Defendants.

- - - - - x

Video Conference

June 3, 2022

9:45 a.m.

EXAMINATION BEFORE TRIAL of P.O. ADAM  
GORMAN, a Defendant in the above-entitled action,  
taken by the Plaintiff, held at the above  
time and place, pursuant to Court Order,  
taken before Robyn Lehrmann, a Notary Public  
in and for the State of New York.

**COPY**

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2 A P P E A R A N C E S :

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6

BY: ELLIOT SHIELDS, ESQ.

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8 LINDA KINGSLEY, CORPORATION COUNSEL

Attorney for CITY OF ROCHESTER

9

30 Church Street

Rochester, New York 14614

10

BY: PEACHIE JONES, ESQ.

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# S T I P U L A T I O N S

19

20 IT IS HEREBY STIPULATED AND AGREED by  
21 and among counsel for the respective parties  
22 hereto, that the sealing and certification of  
23 the within deposition shall be and the same  
24 are hereby waived;

25

IT IS FURTHER STIPULATED AND AGREED

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2 that all objections, except to the form of  
3 the question, shall be reserved to the time  
4 of the trial;

5 IT IS FURTHER STIPULATED AND AGREED  
6 that the within deposition may be signed  
7 before any Notary Public with the same force  
8 and effect as if signed and sworn to before  
9 the Court.

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THE REPORTER: The attorneys  
participating in the deposition  
acknowledge that I am not  
physically present in the  
deposition room and that I will  
be reporting this deposition  
remotely.

They further acknowledge  
that in lieu of an oath  
administered in person, I will  
administer the oath remotely.

The parties and their  
counsel consent to this  
arrangement and waive any

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objections to this manner of  
reporting. Please indicate your  
agreement by stating your name  
and your agreement on the  
record.

6

7

MR. SHIELDS: Elliot  
Shields, I agree.

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9

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12

MS. JONES: Peachie Jones  
for the City, I also agree. I  
will request a copy of the  
transcript.

13

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MR. SHIELDS: Peachie, can  
you get in the video view so we  
can see you during the  
deposition?

17

18

MS. JONES: You want me in  
the video?

19

20

MR. SHIELDS: Yes.

21

22

(A discussion was held off  
the record.)

23

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1 P.O. Adam Gorman

2 to get to that level.

3 A So, basically, it is more  
4 specific facts to support that legal  
5 conclusion, right.

6 A I wouldn't say facts. I would  
7 say -- I would say reasonable suspicion if  
8 you have --

9 (Reporter Clarification.)

10 A I don't think facts are the sole  
11 factor for probable cause. Circumstances and  
12 your reasonable suspicion are major portions  
13 of it and I just don't want that to be  
14 overlooked in this case.

15 Q The totality of the  
16 circumstances, right?

17 A Correct.

18 Q Got it.

19 This just says it's the policy  
20 of the department, under 3D, not to conduct a  
21 warrantless search unless it meets the legal  
22 criteria for the exception to the warrant  
23 rule, right?

24 A Correct.

25 Q Prior to the incident in this

1 P.O. Adam Gorman

2 case, had you received any specific training  
3 from the Rochester Police Department about  
4 exigent circumstances, consent, and other  
5 exceptions to the warrant rule?

6 A I'm sorry. I'm am out of cough  
7 drops. Yes.

8 Q Was that field training or  
9 something else?

10 A Academy and field training.

11 Q The academy isn't a specific RPD  
12 training, right? I guess that is what I  
13 meant. I am sorry for asking the unclear  
14 question.

15 RPD would have been just field  
16 training?

17 A That and post-academy.

18 Q Procedures during and following  
19 warrantless searches, City of Rochester, 843  
20 is the page. So under "A" it says, following  
21 any search, members will document their  
22 actions. This is especially important  
23 because the reasonableness of the search and  
24 seizure cannot be based on what was found as  
25 a result of the search. Instead it is

1 P.O. Adam Gorman  
2 measured by the facts and circumstances known  
3 to the member prior to the search and  
4 seizure, right?

5 So I am going to stop there. So  
6 my first question is, after this incident,  
7 did you complete any paperwork?

8 A I don't think so.

9 Q When this says, "Following any  
10 search members will document their actions,"  
11 is there like a specific form that that is  
12 referring to?

13 A No. There is no specific  
14 search, I guess you would say.

15 Q So do you know what this General  
16 Order is referring to when it says document?  
17 Is there a general rule about documenting  
18 things like searches in a specific form?

19 A It would be documented under --  
20 in the narrative portion of your either  
21 incident report or IA report.

22 Q So, basically, this says that if  
23 you do a search you have to do an IA report  
24 or an incident report?

25 A That is what I am gathering from

1 P.O. Adam Gorman

2 it, yes.

3 Q You conducted a search in this  
4 case, right?

5 A Yes, I did.

6 Q But you didn't complete any  
7 forms?

8 A No, I did not.

9 Q So, technically, that would be a  
10 violation of General Order 415, right?

11 A That it would be.

12 Q It says, "This is especially  
13 important because the reasonableness must be  
14 measured by the facts that you knew prior to  
15 the search and not after." Right?

16 A That's correct.

17 Q We already discussed what you  
18 knew prior to searching the individual that  
19 you stopped that he had run.

20 A Correct.

21 Q After you searched him, you  
22 didn't find anything on him, right?

23 A I did not find any illegal  
24 objects on his person, no.

25 Q No contraband on his person or

1 P.O. Adam Gorman

2 anywhere else, right?

3 A Correct.

4 Q He was eventually released  
5 without being given a ticket or charged with  
6 a crime?

7 A That is correct.

8 Q I will have more questions about  
9 that later, but I'm going to move on for now.  
10 Appendix one, exceptions to the  
11 search warrant requirement.

12 Have you read this General Order  
13 all the way through before?

14 A I would say, yes, I have. I  
15 have read a lot of them, but I can't narrow  
16 it down to one specific day.

17 Q What are the general  
18 circumstances when you read general orders?  
19 Like, why would you just sit down and read  
20 one?

21 A I am board.

22 Q At work, like you have downtime?

23 A Slow day, winter days, so open  
24 up the books and go at it.

25 Q Like, when you worked in the

1 P.O. Adam Gorman

2 pizza shop, did they ever tell you time to  
3 lean is time to clean?

4 A I have actually heard that  
5 before, yes.

6 Q So it is like that for police  
7 officers?

8 A Yes. Technically, if you are  
9 not actively doing police work you are only  
10 allowed to read police material during work  
11 hours.

12 Q Got it.

13 Police would be general orders  
14 or policies.

15 What else would that be?

16 A Anything related to the job,  
17 case law, if I am researching case law,  
18 things of that nature.

19 Q Let's go through this exception  
20 for the search warrant requirements. We have  
21 the arrest warrant. We're not worried about  
22 that here.

23 The frisk exception, so when you  
24 did the search of the individual that you  
25 handcuffed, was that the frisk exception or

1 P.O. Adam Gorman

2 with it with basically, like, the camera on  
3 and if you hit the button it will start  
4 recording and it will have that 30 seconds  
5 from before you hit record, but not audio?

6 A Correct. I am going to use  
7 color coding because there is a light  
8 indicator that's on the camera. If it is  
9 green, it is -- and if it is green status and  
10 you hit record it will capture the previous  
11 30 seconds of visual.

12 Q Got it.

13 And then at that point you would  
14 see a green light on the camera itself?

15 A Correct.

16 Q Is that when you are walking  
17 around normally your body camera is working?

18 A Yes.

19 Q In green?

20 A Yes.

21 Q Now, I will hit play and pause  
22 it at some point and ask you some questions.

23 My first question is, it sounded  
24 like there was only about five seconds of  
25 there not being any audio. Is that normal?

1 P.O. Adam Gorman

2 A It is not abnormal. All it  
3 indicates to me is that the camera wasn't in  
4 green status.

5 Q So you just ran.

6 Do you know what the property  
7 address was that you just ran through?

8 A I do not.

9 Q Do you know why you were on  
10 Sobieski Street at that point?

11 A Yes.

12 Q Why was that?

13 A With the anticipation that the  
14 suspected drug dealers were going to run  
15 south through the yards towards Sobieski  
16 Street as they have done in the past.

17 Q So you guys had a plan basically  
18 on this day?

19 A Correct.

20 Q So that was your, like, I don't  
21 know, station, or whatever, and the other  
22 officers went to the front and Kosciusko  
23 Street?

24 A Correct.

25 Q The plan was to have the suspect

1 P.O. Adam Gorman  
2 run through the backyard and Kosciusko Street  
3 as you anticipated that is what they would do  
4 and as they came through the yard your plan  
5 was to go and apprehend them?

6 A Correct.

7 Q So that is what we thought with  
8 you running through this yard here and  
9 apprehending this guy right here, right?

10 A Correct.

11 Q We hit pause, for the record, at  
12 1707 and 13 seconds. There is activity 15  
13 seconds into the video. And I will hit play  
14 again. So I am just going to pause there.  
15 So you said you did it yesterday too.

16 Did you guys do a similar thing  
17 the day before?

18 A Similar, yes. We were familiar  
19 with these individuals at the time selling on  
20 that corner, correct. Yes.

21 Q What happened on the day before?

22 MS. JONES: Objection.

23 A From my recollection, on our  
24 arrival they had ran south to Sobieski Street  
25 through the same yards.

1 P.O. Adam Gorman

2 Q So that is how you guys devised  
3 a plan on this day?

4 A Correct.

5 Q Do you know what the officers on  
6 Kosciusko Street did?

7 A I do not.

8 Q On the previous day, had you  
9 arrived on Kosciusko Street and witnessed  
10 them running?

11 A Yes.

12 Q So on the previous day, what  
13 happened? Did you drive your car and then  
14 park and they ran or something else?

15 MS. JONES: Objection.

16 A I vaguely remember just pulling  
17 up and upon police arrival it was immediate  
18 flight.

19 Q Did you chase them through the  
20 yards on the previous day as well?

21 MS. JONES: Objection.

22 A I don't recall.

23 Q So you might have, but you don't  
24 recall?

25 A Correct.

1 P.O. Adam Gorman

2 Q But they weren't apprehended on  
3 the previous day, right?

4 MS. JONES: Objection.

5 A I believe that's correct.

6 Q Do you remember if on the  
7 previous day it was a response to a 911 call  
8 or if it was, what do we call it, proactive  
9 policing when you stopped them?

10 A I cannot tell you.

11 Q So you don't recall?

12 A Correct.

13 Q I will hit play again here. We  
14 paused at 58 seconds into the video, which is  
15 170757 on the bottom right. I am going to  
16 pause there.

17 So when we first paused, it was  
18 about 15 seconds into the video, right?

19 A Correct.

20 Q Then that is how long it took  
21 you to go from the front on Sobieski to the  
22 fence before you apprehended him, right?

23 A Correct.

24 Q Now, we are two minutes into the  
25 video. Does that look right to you?

1 P.O. Adam Gorman

2 A Yes.

3 Q Right before I paused, did you  
4 hear yourself ask Officer Algarin to  
5 backtrack?

6 A Yes.

7 Q So if it took you about 15  
8 seconds to get from Sobieski Street to the  
9 back of that fence, would it be fair to say  
10 that it probably would take a similar amount  
11 of time to get from the backyard to the front  
12 of the house on Kosciusko Street?

13 MS. JONES: Objection.

14 A Similar time frame, yes.

15 Q So for at least a minute and 45  
16 seconds, right, we know that the individual  
17 that you apprehended was present in this  
18 backyard, correct?

19 A Correct.

20 Q So for at least a minute and 45  
21 seconds, there would have been any potential  
22 contraband located in the backyard at the  
23 house next door that was owned by my client,  
24 correct?

25 A Correct.

1 P.O. Adam Gorman

2 Q So that is a longer amount of  
3 time than it would have taken to just walk to  
4 the front door, right, maybe knock, ask for  
5 permission or consent to enter the backyard?

6 A At the time I was searching him  
7 was a longer time than it would have taken to  
8 walk to the front door, yes.

9 Q Before you asked Officer Algarin  
10 to backtrack, do you know how many officers  
11 had responded to the scene at that point?

12 A Just the initial ones that were  
13 there.

14 Q Would that have been a couple of  
15 more officers? There was one other officer  
16 with you on Sobieski Street and one other  
17 officer with Algarin?

18 A Yes.

19 Q So there were two other  
20 officers, right?

21 A Correct.

22 Q At that point, there could have  
23 been another officer to watch over the  
24 backyard and any potential contraband while  
25 another officer asked for consent to enter

1 P.O. Adam Gorman

2 the backyard?

3 A No.

4 Q Why not?

5 A Because you don't put one  
6 officer with two suspects.

7 Q How many suspects were there?

8 A There were two.

9 Q There were two suspects and  
10 there were four officers?

11 A Total, yes.

12 Q So there could have been one  
13 officer with one suspect, a second officer  
14 with a second suspect, a third officer  
15 looking at the yard, and a fourth officer  
16 knocking on the door?

17 A Yes.

18 Q That is something that could  
19 have reasonably been done, correct?

20 MS. JONES: Objection.

21 A Could have after a few moments  
22 of orchestrating it, yes.

23 Q Before you asked Algarin to  
24 backtrack, as far as you were aware, there  
25 were no other suspects that were in the area,

1 P.O. Adam Gorman

2 correct, just the two people that had been  
3 apprehended?

4 A Not to my knowledge.

5 Q So in that time Algarin or  
6 another officer could have taken 15, 20  
7 seconds to walk to the front door and ask for  
8 consent, right?

9 A Correct.

10 Q I will keep playing here for a  
11 second. We are paused at exactly two minutes  
12 into the video, or 170858 on the bottom  
13 right. I am going to pause right here.

14 In this yard you see this big  
15 cage and a doghouse, right?

16 A Correct.

17 Q What would you have done if the  
18 dog had just suddenly run out of that  
19 doghouse at you?

20 MS. JONES: Objection.

21 A Depends on the manner of the  
22 dog.

23 Q If it had ran right at you and  
24 barked, what would you have done?

25 MS. JONES: Objection.

1 P.O. Adam Gorman

2 A I think that is too hypothetical  
3 and very vague.

4 Q It would help if maybe you had  
5 some prior simulation-based training to help  
6 you deal with an incident like that, right?

7 A No. I mean, yes, but, no.

8 Q The more exposure and training  
9 that you have to specific types of threats,  
10 the better you are able to deal with them in  
11 real time, right?

12 A Yes.

13 Q So if you had more training  
14 about interacting with potentially aggressive  
15 dogs running at you, maybe you could make a  
16 better decision in the moment, right?

17 A Potentially.

18 Q Because we agreed earlier that  
19 the more training the better, right?

20 A It doesn't hurt.

21 Q In this instance, there was no  
22 dog in this yard, right?

23 A Correct.

24 Q Before you jumped the fence and  
25 entered this yard, is that something that you

1 P.O. Adam Gorman

2 noticed, the doghouse?

3 A Not particularly, no.

4 Q You didn't really think about  
5 that before you came into this yard?

6 A No.

7 Q I will hit play. We're at two  
8 minutes and three seconds into the video, or  
9 170903. Let me ask you about that statement  
10 that you just made.

11 Do you know who his cousins are?

12 MS. JONES: Objection.

13 A Not by name.

14 Q Were you familiar with that guy  
15 that you had stopped?

16 A Yes. I've seen him in the area  
17 before.

18 Q Did you know his name?

19 A Not offhand, no.

20 Q Do you know who his cousins  
21 were?

22 MS. JONES: Objection.

23 A Again, all the personnel hanging  
24 out in that area that day were all familiar  
25 faces and known to stand there and sell

1 P.O. Adam Gorman

2 drugs.

3 Q Do you know what his cousins  
4 look like?

5 A Not anymore.

6 Q Do you know why you said to him  
7 whether it is you or your cousins?

8 A Just to talk.

9 Q Do you think his cousins were  
10 other, I don't know, black men?

11 MS. JONES: Objection.

12 A Do I think or do I know?

13 Q Sure. Do you know? I mean, I  
14 asked you if you knew who his cousins were.

15 A Yes. I know that people I seen  
16 on that day were male blacks.

17 Q Do you know if the other guy  
18 that was stopped was his cousin?

19 A The term I'd identify for  
20 everyone here, the term "cousin" is very  
21 commonly used as pal, friend, buddy,  
22 acquaintance in the City of Rochester. It  
23 does not have to be direct familial  
24 relationship to be a cousin or aunt or uncle.

25 Q Did you ever review this

1 P.O. Adam Gorman

2 recording with your supervisor or anybody  
3 else?

4 A Not that I remember.

5 Q Can you see how somebody might  
6 perceive your statement, "Whether it is you  
7 or your cousins out here dealing," that is  
8 pretty racist?

9 A No, not at all.

10 Q So you don't see any reason why  
11 somebody might think that what you said to  
12 him could be perceived as racist by him or  
13 somebody else?

14 MS. JONES: Objection.

15 A Not in the slightest.

16 Q Have you ever had any  
17 conversations with supervisors or anybody  
18 else about, I don't know, communicating with  
19 members of the community in a way to ensure  
20 that they don't perceive things that you say  
21 as being racist?

22 MS. JONES: Objection.

23 A Not particularly, no.

24 Q Because some of the prior  
25 training reports that we have gone over

1 P.O. Adam Gorman

2 emphasize community relations and  
3 communicating effectively, correct?

4 A That's correct, yes.

5 Q None of those prior training  
6 reports or things that your supervisors had  
7 spoken with you about regarding communicating  
8 with people in the community effectively  
9 involved any statements made by you that  
10 could be perceived as potentially racist?

11 A No.

12 Q This is one of the things that  
13 your supervisors were emphasizing is trying  
14 to improve community relations, right?

15 A Correct.

16 Q So you want to, you know, maybe  
17 use an interaction like this to have a  
18 positive outcome, right. And, for example,  
19 encourage the person that you stopped to make  
20 different choices?

21 MS. JONES: Objection.

22 A Are you implying that I did not?

23 Q What I am saying is that what  
24 your supervisors and your different training  
25 reports were emphasizing was trying to

1 P.O. Adam Gorman  
2 improve community relations through  
3 communications with individuals that you  
4 interact with on a daily basis, right?

5 A Yes. That is fair ultimate  
6 wish.

7 Q Do you agree with their ultimate  
8 wish?

9 MS. JONES: Objection.

10 A Yes.

11 Q One of your goals of patrolling  
12 is having positive interactions with people  
13 in the community to improve relations between  
14 the police and people in the community?

15 A Most definitely.

16 Q Do you think your interaction  
17 with this man here went towards achieving  
18 that goal of improving relations between the  
19 police and the community?

20 A Yes, actually, I do.

21 Q Can you kind of explain how you  
22 think that that individual left this  
23 interaction feeling better about the police?

24 MS. JONES: Objection.

25 A Well, what I am inferring from

1 P.O. Adam Gorman

2 your question is that I am acting in a racist  
3 manner towards these individuals, which is  
4 not the case. And using common terms that is  
5 used within the City of Rochester makes them  
6 feel like I am more personable to them. In  
7 addition to that, this man, whether he has  
8 had bad experiences with the police or not,  
9 his interaction went relatively smooth. He  
10 got detained and then he got let go. That is  
11 a pretty positive interaction to not have to  
12 come out facing criminal charges.

13 Q What criminal charges would you  
14 have brought against him?

15 A I don't know. It depends on  
16 what the officers on Kosciusko had seen.

17 Q So based on your observations  
18 and the fact that no contraband was  
19 recovered, just based on your knowledge,  
20 there was not probable cause to charge him  
21 with a crime, correct?

22 MS. JONES: Objection.

23 A No. There was not probable  
24 cause to charge him with a crime. There was  
25 reason to stop him and detain him. But, no,

1 P.O. Adam Gorman

2 not at this exact moment in the  
3 investigation.

4 Q That is my question, yes. You  
5 let him go because after pat searching him,  
6 not finding any contraband, there was not  
7 evidence to support probable cause to believe  
8 that he had committed a crime, correct?

9 A No, there was. He was  
10 trespassing. I have reason to believe he was  
11 trespassing on multiple different properties  
12 by cutting through them.

13 Q You could have charged him with  
14 trespass?

15 A No, not without the owner's  
16 consent or the owner's will, but that would  
17 have been further investigative action that I  
18 would have taken.

19 Q You could have talked to my  
20 client, Chuck Dempsey, and asked him if he  
21 wanted him to be charged with trespassing,  
22 but you didn't.

23 A We hadn't gotten to that point.

24 Q You didn't ask the owner of this  
25 house where you detained him if he wanted him

1 P.O. Adam Gorman

2 to be arrested for trespass?

3 MS. JONES: Objection.

4 A I would have if we had been able  
5 to get to that point, yes.

6 Q As a part of your training by  
7 the RPD, have you ever done any implicit bias  
8 training?

9 A Yes, we have.

10 MS. JONES: Objection.

11 Q Sorry. I couldn't hear over the  
12 objection.

13 Is that, yes, you have?

14 A Yes.

15 Q Can you describe that training  
16 for me?

17 MS. JONES: Objection.

18 A The idea of the training is to  
19 say that based on your upbringing, nature,  
20 nurture, argument that you have some  
21 conscious thoughts that can manifest into  
22 actions based on different race, religion,  
23 creed, or any other characterization, the  
24 idea of the training is to make you aware  
25 that those subconscious thoughts are there or

1 P.O. Adam Gorman

2 can be there.

3 Q And do they teach you about how  
4 those subconscious thoughts can manifest in  
5 ways that you might say something that you  
6 don't think could be perceived as racist,  
7 might be perceived by other people as  
8 potentially being racist, right?

9 MS. JONES: Objection.

10 Elliot, there are not these  
11 type of allegations in the  
12 lawsuit.

13 MR. SHIELDS: I am asking  
14 him about what he said to this  
15 particular person on this  
16 particular day and so it is a  
17 valid line of questioning.

18 MS. JONES: But it's not  
19 about the claims that was  
20 actually brought against Officer  
21 Gorman.

22 MR. SHIELDS: And deposition  
23 questions are not limited in  
24 that way. So I am going to have  
25 to ask you to stop making

1 P.O. Adam Gorman  
2 speaking objections on the  
3 record. You have stated your  
4 objection. He can answer the  
5 question.

6 A The term cousin, if you --  
7 Elliot, if you would like, you can define it  
8 for me. The term cousin is in no way, shape,  
9 or form racist. And if that's the term that  
10 you are referring to, perception, sure, can  
11 be -- as the saying goes, perception is  
12 everything, but I can perceive anything I  
13 want. It doesn't make it true.

14 Q When did you receive implicit  
15 bias training with the Rochester Police  
16 Department?

17 MS. JONES: Objection.

18 A Prior to this date, I would say  
19 the academy.

20 Q Have you also received implicit  
21 bias training after this date?

22 MS. JONES: Objection.

23 A Yes. Yes.

24 Q Was that like an in-service  
25 training or something else?

1 P.O. Adam Gorman

2 MS. JONES: Objection.

3 A I am quite sure it was  
4 in-service training.

5 Q So it would be like a day-long  
6 training?

7 MS. JONES: Objection.

8 A A portion thereafter, yes.

9 Q When you do, like, an in-service  
10 training, is that a day that you would  
11 otherwise be working on patrol that instead  
12 you take off and go to a training?

13 A Yes. Typically an eight-hour  
14 in-service is counted as your work day or  
15 your work hours and you are compensated, for  
16 example, not going to work the night before.

17 Q You don't remember the date you  
18 might have done that in-service training?

19 A No clue.

20 MS. JONES: Objection.

21 Q I am going to continue playing  
22 the video. So we hit pause at two minutes  
23 and 15 seconds into the video, or 170915.

24 Just in that interaction right  
25 there, can you tell me what you meant when

1 P.O. Adam Gorman  
2 you were saying to him that day, you know, "I  
3 am not new. We have to stop it."

4 MS. JONES: Is this still  
5 playing?

6 MR. SHIELDS: No. I paused  
7 it.

8 MR. JONES: We are lagging.  
9 I think we are a little behind  
10 you.

11 MR. SHIELDS: I'm sorry.

12 Q Do you want me to repeat the  
13 question?

14 A No. No. When I expressed not  
15 only do I understand the activities going on  
16 out here, I am talking with him and trying to  
17 avoid beating around the bush about the drug  
18 activity that is going on.

19 Q When you were talking about  
20 that, do you mean specifically on Kosciusko  
21 Street?

22 A Correct.

23 Q So for two days in a row on  
24 Kosciusko Street you and other officers  
25 basically drove the cars up and then this

1 P.O. Adam Gorman

2 individual and other people ran from the  
3 police when you pulled up.

4 Is that fair to say?

5 A Correct.

6 Q The fact that that happened two  
7 days in a row, does that go under the  
8 totality of the circumstances evaluation of  
9 whether you had suspicion to stop him or  
10 suspicion or probable cause to conduct a  
11 search?

12 A That it does.

13 Q I will keep playing now.

14 In the moment when he was  
15 screaming about his daughter, what were you  
16 thinking?

17 A I didn't hear daughter. I heard  
18 dog.

19 Q I am going to rewind a little  
20 bit.

21 Did you hear him say "my  
22 daughter"?

23 A I did.

24 Q Were you aware that his daughter  
25 was watching the entire incident from right

1 P.O. Adam Gorman

2 inside the back door there?

3 A No, I was not.

4 Q Did you ever come to learn that  
5 after the incident?

6 A I did.

7 Q I just want to rewind a little  
8 bit and ask you a couple of other questions.  
9 We are rewinding to 259 in the video, or  
10 170958 seconds. He asked you to leave his  
11 property, but did you ever do that? Did you  
12 ever leave his property?

13 A No.

14 Q And why not?

15 A It was an active scene at this  
16 point.

17 Q By active scene you mean because  
18 Officer Algarin had shot Tesler two times?

19 A Correct.

20 I am assuming by Tesler you mean  
21 the dog.

22 Q His pet dog, Tesler, yes.

23 So is that like a police  
24 department policy, once a firearm is  
25 discharged, that makes it like an active

1 P.O. Adam Gorman

2 crime scene?

3 A Yes.

4 Q So you have to stay there to  
5 investigate the crime that another officer  
6 had committed?

7 MS. JONES: Objection.

8 A I would not call it a crime, no.  
9 I will investigate the incident to determine  
10 if a crime was committed.

11 Q That is generally what happens  
12 any time a firearm is discharged?

13 A Yes. Whether an officer or a  
14 third-party civilian, whatever the case is,  
15 yes.

16 Q So legally you are saying even  
17 though he asked you to leave his property you  
18 didn't have the authority to leave his  
19 property, you had to stay there?

20 A Correct.

21 Q Interesting.

22 And do you know if that is  
23 written anywhere in the Rochester Police  
24 Department policy?

25 A To secure a crime scene, yes.

1 P.O. Adam Gorman  
2 depositions, objections as to  
3 relevance aren't really a basis  
4 to instruct a witness not to  
5 answer.

6 With respect to the question  
7 of displaying the tattoos, you  
8 know, I have never really had  
9 that before. Obviously, I am a  
10 law clerk and I can't really  
11 make any determinations for you,  
12 but what I can do is I can see  
13 if I can get Judge Payson and  
14 see if she has any further  
15 insight. She has a very full  
16 calendar today, so I don't know  
17 that I can get her. And I  
18 understand you are nearing the  
19 end of the deposition; is that  
20 correct?

21 MR. SHIELDS: Correct.

22 MS. CORNETTA: What I would  
23 suggest is let me put you on  
24 hold and I will see if I can get  
25 Judge Payson to if she can give

1 P.O. Adam Gorman  
2 me any insight into this issue.  
3 You are free while I have you on  
4 hold if you want to try to  
5 continue the deposition, that is  
6 fine with me and I will come  
7 back on when I have some further  
8 information for you. If you  
9 want to sit and wait that is  
10 fine as well. I don't think it  
11 will be terribly long to  
12 determine whether or not I can  
13 get her.

14 So why don't I put you on  
15 hold and you guys do what you  
16 think is the most sufficient use  
17 of your time and I will get back  
18 on as soon as I have more  
19 information.

20 MR. SHIELDS: Great. Thank  
21 you so much. We'll be waiting.

22 MS. CORNETTA: I will get  
23 back.

24 MS. JONES: Are we going to  
25 continue?

1 P.O. Adam Gorman

2 MR. SHIELDS: Yes. Let's  
3 keep going, so we can,  
4 hopefully, finish this up after  
5 they get back.

6 Q Officer Gorman, in this  
7 situation, right, that we watched in the  
8 body-worn camera video where Officer Algarin  
9 jumped the fence in my client's yard, you  
10 guys obviously didn't have a warrant, right?

11 A Correct.

12 Q The exception for the other  
13 warrants would have had to apply what we  
14 covered earlier, right?

15 A Correct.

16 Q Why didn't you just ask Officer  
17 Algarin to walk to the front door to ask for  
18 permission and knock on the door? Did you  
19 ever think about that?

20 A At the time, it did not cross my  
21 mind.

22 Q So earlier you had described  
23 that on a prior day you had run a similar  
24 operations where these same individuals had  
25 run from you on Koskusco Street.

1 P.O. Adam Gorman

2 A Correct.

3 Q How frequent is that type of  
4 situation where people run from you into  
5 residential yards?

6 A In the City of Rochester, if  
7 someone runs, they are cutting through a  
8 residential yard.

9 Q So when someone runs and you  
10 chase them, you are often also going through  
11 a residential yard, right?

12 A Correct.

13 Q That is like a typical  
14 situation?

15 A Yes.

16 Q This happens on a frequent  
17 basis?

18 A In terms of foot chases, yes.

19 Q So if you say it's frequent in  
20 terms of foot cases, that means more than  
21 half of foot cases ends up going through  
22 someone's residential yard?

23 A Yes.

24 Q How often would you say that  
25 happens during a normal week?

1 P.O. Adam Gorman

2 A I couldn't even fathom to give  
3 you a number. There are too many platoons  
4 and sections in the City. I couldn't give  
5 you a realistic number at all.

6 Q I am sorry. I mean, in your  
7 experience, how often do you end up having to  
8 do a foot chase through some residential  
9 yards?

10 A Me, personally, once every  
11 couple of weeks.

12 Q On average?

13 A Yes.

14 Q Would that be since you switched  
15 to the first platoon or throughout your time  
16 both on the third and the first?

17 A If you did it altogether, I  
18 would say once every couple of weeks.

19 Q Is that something that would  
20 have happened more frequently when you were  
21 on the third platoon than when you were on  
22 the first?

23 A Yes.

24 Q Have you previously encountered  
25 dogs on peoples' property during foot chases?

1 P.O. Adam Gorman

2 A No, I don't think so, not during  
3 the foot chase.

4 Q How often during those foot  
5 chances did you end up backtracking and going  
6 through the route that you chase the person  
7 to look for any discarded contraband?

8 A On my personal foot chases are  
9 you asking?

10 Q Yes. I am just asking about  
11 your experience, you know, what you have  
12 done.

13 A I would say the majority of the  
14 time.

15 Q Would it be fair to say that a  
16 majority of the time some of those times at  
17 least would require you to jump over a fence  
18 similar to what happened in this instance?

19 A Yes.

20 Q In any of those other instances,  
21 have you ever gone to the property owner's  
22 front door and asked for consent to enter  
23 their property?

24 A Prior to this date, not that  
25 comes to mind.

1 P.O. Adam Gorman

2 Q After this date of incident,  
3 have you ever done that, gone to the front  
4 door and asked for someone's consent to enter  
5 their property?

6 A Yeah.

7 Q Why did you do that after this  
8 incident?

9 A Typically, when looking for  
10 discarded contraband, those items can be  
11 obviously tossed relatively easily to a  
12 significant distance, so multiple yards over.  
13 And within the City limits, many people have  
14 fences and some of those fences are either  
15 impassible without damage to the fence,  
16 injury to the officer, or just the height.  
17 So there have been occasions where I go knock  
18 on the door, ask them, hey, can you open up  
19 the gate. Or I hear a dog in the backyard  
20 and I will say, hey, can you bring your  
21 animals inside? We're looking for something.

22 Q So when you think there might be  
23 a dog in the yard because there are  
24 indications that in an instance after this  
25 dog shooting where you have gone and knocked

1 P.O. Adam Gorman

2 check.

3 Q Just checking if they had any  
4 open warrants?

5 A Correct.

6 Q Back here it says "PK" and "A"  
7 were released.

8 So that means, both of them were  
9 just released from the scene, right?

10 A I don't know if the man arrested  
11 was released and issued an appearance ticket  
12 on scene or at his office.

13 Q The guy you stopped was released  
14 from the scene?

15 A Correct.

16 Q You know, when I first read  
17 this, I didn't know about the day before. So  
18 at the beginning of the incident report where  
19 he is talking about, you know, how Officer  
20 Horowitz said he had responded with you to  
21 Sobieski Street, that was all planned in  
22 advance, right?

23 A Yes.

24 Q Had you done that before, kind  
25 of like camped out on Sobiesky Street and

1 P.O. Adam Gorman

2 expected people to run through the yards?

3 A I don't think so.

4 Q You guys devised it that day  
5 based on what had happened the prior day?

6 A Yes. Based on once we received  
7 the 911 call, that is how we were going to  
8 respond to the 911 call.

9 Q So basically you made a plan to  
10 flush them out through the yards and stop  
11 them hopefully in one of those backyards?

12 A No. Just cut them off mid run.

13 Q Yeah.

14 Now, before you did that, did  
15 you do any investigation into any of those  
16 homes or yards to see whether any of them had  
17 dogs?

18 A No. By the time we -- I pulled  
19 up on Sobieski, the -- I mean, we were  
20 already running. That is why.

21 Q Remember when you only saw the  
22 five seconds?

23 A Yes. Because I just had  
24 activated it and it only stayed in the green  
25 status as we discussed earlier for about five

1 P.O. Adam Gorman

2 seconds.

3 Q So basically before the camera  
4 turned on, you had just arrived at the scene  
5 in your car?

6 A Yes.

7 Q So it wasn't like you had hours  
8 to devise this plan. You had the 911 call,  
9 responded, and at the same time you pulled up  
10 on Sobieski Street, Officer Alagrin and  
11 DeSabatino arrived on Kosciusko Street?

12 A Correct.

13 Q And those are streets that you  
14 are familiar with; is that right? You were  
15 there the prior day?

16 A Yes.

17 Q I just want to go over the  
18 incident report with you. This will be  
19 Exhibit J.

20 (Incident report marked as  
21 Plaintiff's Exhibit J for  
22 identification, as of this  
23 date.)

24 Q Can you see that on your screen,  
25 Officer Gorman?